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July 12, 2001

Hand Delivery

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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**JUL 12 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Re: CC Docket No. 01-138; Application of Verizon Pursuant to Section  
271 of the Telecommunications Act of 1996 to Provide In-Region  
InterLATA Services in Pennsylvania

Dear Ms. Salas:

The comments of WorldCom Inc. in the above-captioned section 271 application of Verizon for the state of Pennsylvania were filed electronically yesterday (without the declarations), but the paper copies could not be filed yesterday due to photocopier breakdown. Enclosed are our comments with declarations for filing. Please call me with any questions.

Sincerely,



Keith L. Seat

Enclosures

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Application by Verizon )  
for Authorization to Provide In-Region, )  
InterLATA Services in Pennsylvania )  
\_\_\_\_\_ )

CC Docket No. 01-138

**COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY  
VERIZON FOR AUTHORIZATION TO PROVIDE IN-REGION,  
INTERLATA SERVICES IN PENNSYLVANIA**

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## **INTRODUCTION AND EXECUTIVE SUMMARY**

Verizon-Pennsylvania (“Verizon”) has progressed a long way toward opening its local markets to competition, under the constant prodding of the Pennsylvania commission and competitors striving to enter local markets in the state. Unfortunately, instead of resolving the handful of issues that remain and presenting this Commission with a clean application, Verizon seeks section 271 authorization based on future promises and rhetoric rather than demonstrated performance. The Commission should finish the good work begun by the Pennsylvania Public Utility Commission (“PUC”) by insisting that Verizon complete the following short list of tasks necessary for robust, long-term competition and thereby satisfy section 271 prior to interLATA entry.

Electronic Billing. Verizon has never once satisfied the requirement that it submit to its wholesale customers accurate, auditable, monthly bills for services in the industry standard CABS-BOS format. Because Verizon’s bills are not auditable, there is no way to know that they are accurate, and it appears they are not. Verizon has struggled with electronic billing for years, and hasn’t got its problems under control yet. While there were improvements in the May 2001 bill, old problems recurred in the June bill. Verizon’s inability to provide proper billing at this time is very worrisome, since the problem is a substantial issue for Verizon and it will never have any greater incentive to make sure its performance is adequate than during this period of section 271 review. Verizon’s electronic billing problems must be resolved and demonstrated to be fixed through commercial experience prior to section 271 authorization.

Performance Metrics and Remedies. The Pennsylvania PUC has acknowledged that the

current metrics and remedy plan are inadequate, and has ordered that the New York metrics and remedies be substituted. Verizon has not yet carried out the former and opposes the latter; indeed, it has not abandoned its position that the PUC has no authority to impose *any* penalty plan. Until adequate metrics and remedies are in place, Verizon has a strong unrestrained incentive to discriminate against its competitors, and section 271 authorization would be contrary to the public interest.

Cost-Based Pricing. The federal district court charged with reviewing Pennsylvania's UNE prices has concluded that Verizon and the PUC have failed to establish that the rates comply with the FCC's TELRIC requirements. The PUC's principal response to this ruling is to claim that the federal court has no jurisdiction to review its pricing judgments. Under these circumstances, the governing presumption must be that the rates are not TELRIC. Verizon has not met its burden of showing that the rates are TELRIC; to the contrary it is clear that the PUC based the network element rates on Verizon's embedded network, rather than a forward-looking model, as required by TELRIC.

Other Issues. In addition to the three principal matters above, other issues need to be resolved prior to entry as well. First, in addition to billing problems, Verizon must resolve other OSS issues and demonstrate its ability to perform adequately over time on issues including returning notifiers, resolving call blocking errors, ensuring adequate flow-through and providing needed technical assistance. Next, Verizon's practice of locking in local customers through an undefined and largely unregulated "local freeze" unfairly impacts Verizon's competitors. Further, competitors are harmed by Verizon's continuing violation of the FCC rules that allow competitors to identify the points at which they wish to interconnect with Verizon's network.

Finally, Verizon continues to challenge bedrock PUC orders and authority, while at the same time relying on the conditions set in those orders to justify interLATA entry.

All of these issues are narrow and discrete; they could easily have been resolved one way or another by Verizon in the preceding months, before the filing of this application, while Verizon has an incentive to open its market. To require compliance with the most basic requirements of the Telecommunications Act (“Act”) is not to seek “metaphysical perfection.” It is only to demand the presence of conditions that will promote sustainable competition in Pennsylvania’s local telecommunications markets as required by the Commission and the Act. Verizon has taken aggressive positions and essentially declared war on the state commission in recent years. This Commission cannot assume that Verizon will do anything that it is not strictly compelled to do, or that conditions will improve beyond the levels that exist whenever section 271 authority is granted. Thus, Verizon should withdraw its application (or have its application rejected), bring itself into compliance with FCC and PUC requirements, and re-file. So doing would then present a credible application for this Commission’s consideration.

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A	Declaration of Sherry Lichtenberg	Operations Support Systems
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C	Declaration of Chris Frentrup	Pricing

### TABLE OF CITATION FORMS

FCC Orders	
<u>Kansas-Oklahoma Order</u>	<u>In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</u> , CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. Jan. 22, 2001), <u>petition for review filed, Sprint Communications Co. v. FCC</u> , No. 01-1076 (D.C. Cir. filed Feb. 16, 2001)
<u>Louisiana I Order</u>	<u>In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 97-231, Memorandum Opinion and Order, 13 F.C.C.R. 6245 (1998).
<u>Louisiana II Order</u>	<u>In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599 (1998).
<u>Local Competition Order</u>	<u>In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , CC Docket Nos. 96-98 & 95-185, First Report and Order, 11 F.C.C.R. 15499 (1996).

<u>Massachusetts Order</u>	<u>In re Application of Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts</u> , CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130 (rel. April 16, 2001).
<u>Michigan Order</u>	<u>In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan</u> , CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997).
<u>New York Order</u>	<u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York</u> , CC Docket No. 99-295, Memorandum Opinion and Order, 15 F.C.C.R. 3953 (1999), <u>aff'd</u> , <u>AT&amp;T Corp. v. FCC</u> , 220 F.3d 607 (D.C. Cir. 2000).
<u>South Carolina Order</u>	<u>In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina</u> , CC Docket No. 97-208, Memorandum Opinion and Order, 13 F.C.C.R. 539 (1997), <u>review denied</u> , <u>BellSouth Corp. v. FCC</u> , 162 F.3d 678 (D.C. Cir. 1998).
<u>Texas Order</u>	<u>In re Application by SBC Communications Inc., Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas</u> , CC Docket No. 00-65, Memorandum Opinion and Order, 15 F.C.C.R. 18354 (2000).
<b>Declarations and Affidavits</b>	
Bluvol/Kumar Decl.	Declaration of Catherine Bluvol and Sameer Kumar on Behalf of Verizon (VZ-PZ App. A, Tab C).
Frentrup Decl.	Declaration of Chris Frentrup on Behalf of WorldCom (Tab C hereto).
Guerard/Canny/DeVito Decl.	Declaration of Elaine M. Guerard, Julie A. Canny and Marilyn C. DeVito on Behalf of Verizon (VZ-PA App. A, Tab E).
Kinard Decl.	Declaration of Karen A. Kinard on Behalf of WorldCom (Tab B hereto).

Lichtenberg Decl.	Declaration of Sherry Lichtenberg on Behalf of WorldCom (Tab A hereto).
McClean Decl.	Declaration of Kathleen McLean, Raymond Wierzibicki and Catherine T. Webster on Behalf of Verizon (VZ-PA App. A, Tab B).
<b>Other Record Materials</b>	
Global Order	<u>Joint Petition of Nextlink Pennsylvania, Inc. et al.</u> , Docket Nos. P-00991648, P-00991649, Opinion and Order (Pa. PUC adopted Aug. 26, 1999).
Interim Order	<u>Application of MFS Intelenet of Pennsylvania, Inc. et al.</u> , Docket Nos. A-310203F002, <u>et al.</u> , Interim Order (Pa. PUC Apr. 10, 1997).
PUC Report	<u>In re Application by Verizon Pennsylvania, Inc. et al. for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the Commonwealth of Pennsylvania</u> , CC Docket No. 01-138, Consultative Report of the Pennsylvania Public Utility Commission (FCC June 25, 2001).
June 6, 2001 Public Meeting, Statement of Comm'r Brownell	<u>Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania</u> , Docket No. M-00001435, Public Meeting, Statement of Comm'r Brownell (Pa. PUC June 6, 2001).
June 6, 2001 Public Meeting, Statement of Comm'r Fitzpatrick	<u>Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania</u> , Docket No. M-00001435, Public Meeting, Statement of Comm'r Fitzpatrick (Pa. PUC June 6, 2001).

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon	)	
for Authorization to Provide In-Region,	)	CC Docket No. 01-138
InterLATA Services in Pennsylvania	)	
_____	)	

**COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY  
VERIZON FOR AUTHORIZATION TO PROVIDE IN-REGION,  
INTERLATA SERVICES IN PENNSYLVANIA**

With great tenacity, the Pennsylvania PUC has endeavored to require Verizon to open to competition Pennsylvania's local telecommunications markets. As a result, local competition is developing in Pennsylvania, and the practices Verizon has been required to adopt satisfy most of the checklist and public interest requirements set out in section 271. But robust and sustainable competition is deterred by a short list of problems that Verizon has refused to fix before bringing this application to the Commission. Section 271 requires that these problems be fixed *before*, and not *after*, Verizon enters Pennsylvania's long-distance market.

**I. VERIZON HAS NOT MET ITS BURDEN OF PROVING THAT ITS OSS FOR BILLING IS SUFFICIENT.**

Since the passage of the Telecommunications Act, WorldCom has asked Verizon to transmit electronic bills in the industry standard CABS-BOS format. For years Verizon has been required by the PUC to provide such electronic bills, and for years Verizon has claimed that a working electronic billing system either had arrived or was just around the corner. But Verizon has yet to transmit to WorldCom timely, accurate, auditable electronic bills.

WorldCom cannot as a practical matter audit or validate paper bills. WorldCom's paper

bills for Pennsylvania consist of well over one hundred boxes of paper per month and is increasing steadily, with more than one hundred fifty boxes in May. Without electronic bills, WorldCom has no practical way to determine whether Verizon is overcharging it for services it has ordered. Lichtenberg Decl. ¶ 11. As the Pennsylvania PUC explained, “Verizon PA needs to issue timely, accurate, auditable bills to be paid and to give its CLEC customers a meaningful and realistic opportunity to accurately assess their operational costs. It is undisputed that electronic billing is an essential component of the billing process as established in the record. Without adequate electronic billing, CLECs are unable to verify the accuracy of Verizon PA’s wholesale bills in a timely manner.” (PUC Report at 102.) Indeed, even Verizon admits that it is unmanageable for CLECs with large order volumes to rely on paper bills. (March 7 Tr. at 109, Geller testimony (VZ-PA App. B, Tab C, Sub-Tab 15).) Proper billing is a critical issue, for WorldCom’s bills from Verizon for UNEs in Pennsylvania total millions of dollars per month.

**A. Verizon Does Not Submit Timely Auditable Electronic Bills.**

A brief chronology of Verizon’s problems quickly disposes of Verizon’s claim that it “provides timely and accurate electronic bills to CLECs today, and that it will continue to do so in the future.” VZ-PA Br. at 67. The Pennsylvania PUC ordered Verizon to adopt the industry standard CABS-BOS BDT electronic format for billing during the MFS-III proceeding as far back as April 1997. But it was not until January 2000 that Verizon sent a letter to CLECs stating that bills were finally available in CABS-BOS BDT format. Four months later Verizon acknowledged widespread flaws in its billing OSS, and stopped sending electronic bills. Lichtenberg Decl. ¶ 12. In October 2000, Verizon “informed the customer base that they could once again be receiving the BDT.” *Id.* ¶ 13 (quoting Verizon). WorldCom received its first

electronic bill for Pennsylvania in November 2000. That bill contained significant formatting problems and was impossible to audit. Id. ¶¶ 13, 18. These problems continued unabated in subsequent electronic bills.

After receiving the November bill, WorldCom explained the continued formatting and other errors to Verizon and Verizon promised to correct the errors. Id. ¶ 18. Nonetheless, most of the same errors appeared on the December 2000 UNE-P bill. Id. The January 2001 UNE-P bill was similarly inadequate, although by making substantial manual corrections to the formatting WorldCom was finally able to perform a rudimentary audit of the bill. That audit revealed many substantive errors, including numerous occasions in which Verizon was billing WorldCom for the wrong service. Moreover, the total amount listed on the bill under “other charges and credits” was different than the amount obtained by summing the charges and credits. Id. ¶¶ 19-20.

Subsequent to transmission of the January 2001 bill, Verizon again began transmitting bills that were impossible to audit even by manually altering their format. On the February bill, the fields for Universal Service Ordering Codes (“USOCs”), which provide the information on the features a customer has ordered, were left blank. As a result, WorldCom was not able to audit the February bill. Id. ¶ 22. The March bill was even worse, without USOC codes, and also without some 6 million customer records. Id. ¶ 23. The April bill was also inauditable for the same reasons. Id.

The May UNE-P bill was better but still inadequate. It could be audited to a limited degree, and WorldCom’s audit revealed that it was charged inappropriate taxes and late charges. Id. ¶ 24. Verizon acknowledges additional unsolved problems even with the May bill, admitting

that “in some instances, the usage summary totals on platform BDTs include charges that are designated as resale charges.” (McLean Decl. ¶ 151 (VZ-PA App. A, Tab B).) Verizon says that it will not bill for such charges until it has corrected this problem. But the problem Verizon describes may be only a part of a larger problem with ascribing bills to the incorrect service type.

Unfortunately, the June bill, which arrived shortly after Verizon filed this application, solved few of these remaining problems as far as WorldCom is aware, but instead re-introduced some old problems that Verizon claimed to have already solved: the bill again contained critical formatting problems, lacked USOC codes, and once again was impossible to audit. Lichtenberg Decl. ¶¶ 26, 31.

Thus, five years since WorldCom first requested an electronic bill, Verizon has yet to transmit a single UNE-P bill free of serious errors, and it has produced only one bill – in May of this year – that could be even partially audited without making significant changes to the bill. Id. ¶ 28. In addition, not a single electronic bill has been delivered on time, and Verizon continues to produce some bills only on paper. Id. ¶¶ 15-16, 46-50. WorldCom has yet to be able to conduct a complete audit on any bill, and the partial audits it has conducted have revealed important inaccuracies. WorldCom receives electronic bills in CABS-BOS format from approximately 20 vendors, including Verizon-New York, and Verizon-Pennsylvania is the only one with which WorldCom is experiencing the type of problems we have described. Id. ¶ 50. Verizon has most emphatically not shown that it is able to transmit timely, auditable electronic bills.

**B. Verizon Has Not Proved Its Bills Are Accurate.**

What little information WorldCom has been able to ascertain from Verizon's bills suggests that they may well contain substantial inaccuracies even beyond those WorldCom has been able to identify. Because all but one of the bills received by WorldCom have been inauditable, it is impossible to make more substantial claims about the accuracy of the bills. Verizon attempts to fill this gap with an audit conducted by Pricewaterhouse Coopers ("PwC"), but that audit is no substitute for commercial data showing that Verizon's bills are acceptable. There is no reason to rely on a third party audit to demonstrate acceptable performance when Verizon's compliance with PUC rulings would have resulted in far more meaningful data derived from commercial experience.

In any event, the PwC audit did not directly evaluate the performance of Verizon's electronic billing systems. Verizon hired PwC to determine only whether Verizon's electronic bills matched its paper bills for a short period of time. (McLean Decl. ¶ 143 (VZ-PA App. A, Tab B).) Verizon "did not ask PwC to test the completeness or accuracy of the billing information on the BDT." Id. Nor does KPMG's months old evaluation of the paper bill make the comparison more relevant. KPMG performed that evaluation when there was very little competition, and before commercial data revealed problems with the electronic bill. KPMG did not subsequently evaluate whether there were similar problems on the paper bill. It simply makes no sense to assess the accuracy of the electronic bill through an indirect comparison with the paper bill when a direct audit of the electronic bill could have been obtained. Lichtenberg Decl. ¶¶ 40-44.

Moreover, on top of the errors recited above, it appears that the bills are significantly inaccurate in at least one additional important respect. Verizon charges WorldCom incorrectly for switch ports. The Pennsylvania PUC's Global Order required Verizon to tariff two port charges – one that includes all vertical features at a price of \$2.67 per month, and one that includes all but four vertical features at a price of \$1.90 per month. Verizon nevertheless tariffed only the most expensive port charge for UNE-P orders. WorldCom raised this issue with Verizon, and Verizon explained that its systems were not set up to permit WorldCom to order the lower priced port. Therefore, Verizon agreed to credit WorldCom the 77-cent difference between the port charges for each port ordered. Verizon also agreed to fix its systems so that WorldCom would be able to order both ports, and first promised to do so by December 2000, then March 2001, and then April 8, 2001. Despite these repeated commitments, Verizon still has failed to make the necessary changes to its OSS. Lichtenberg Decl. ¶¶ 55-56.

Verizon also has failed to show that it has accurately credited WorldCom the difference between the two charges as it had promised. In August 2000, for example, Verizon credited WorldCom for ordering only two switch ports, which is far fewer than the thousands of switch ports WorldCom ordered. (March 7 Tr. at 96-99, 101, Geller testimony (VZ-PA App. B, Tab C, Sub-Tab 15).) Moreover, Verizon has declined to explain or defend its billing practices on port charges on any of its 2001 bills. And, because of the inauditable bills WorldCom has received, WorldCom has been unable to assess whether Verizon is properly crediting WorldCom for switch port charges on the bills. Lichtenberg Decl. ¶¶ 57-58.

### **C. Verizon's Performance Metrics Do Not Measure Its Billing Performance.**

To make matters worse, Verizon's failure to transmit timely, accurate electronic bills is

not captured in its performance metrics. Verizon only measures the accuracy and timeliness of paper, not electronic, bills. (March 7 Tr. at 110, DeVito testimony (VZ-PA App. B, Tab C, Sub-Tab 15).) Thus, Verizon's performance data has absolutely no relevance in assessing Verizon's performance to date with respect to electronic bills. Verizon's performance data does not even demonstrate the accuracy of its paper bills. Verizon only measures those inaccuracies that CLECs report within one billing period of receipt of the bill. WorldCom could not even read the hundred plus boxes of bills within that time period, even if it were practical for it to deal with paper records. Thus, Verizon's performance data shows that WorldCom's paper bills are 100% accurate regardless of the errors they contain, because neither Verizon nor anybody else has checked the accuracy of those bills. Lichtenberg Decl. ¶¶ 51-53; Kinard Decl. ¶¶ 14-15.

The Pennsylvania PUC has now applied the paper billing metrics to electronic bills and increased the remedies for violation of those metrics. (PUC Report at 103.) These measurements will still depend, however, on reporting of errors by CLECs within the allotted time frame. If the bills are fully auditable and on time, many CLECs should be able to report such errors. But if formatting problems or late bills continue, accurate audits will not occur and the performance reports will continue to underreport problems. Lichtenberg Decl. ¶ 54; Kinard Decl. ¶¶ 14-15.

**D. Verizon's Recent Modifications Are Insufficient to Justify Section 271 Authorization.**

Attempting to address these well-documented problems with its billing systems, Verizon recently has made scores of modifications to its billing processes that may help to eliminate some of the errors that have plagued its billing systems. Presumably it is on the basis of these modifications that Verizon claims its billing systems are robust and accurate. But as the

deficient June bill demonstrates, it is too early to make that claim for problems remain. Of the 81 problems with its billing systems that Verizon acknowledged, the fixes for thirty of these issues were not implemented prior to April 21, 2001 and thus the fixes would not have appeared until the May bill at the earliest. Ten were not fixed until June and thus the fixes would not be apparent until the June or the July bill. (McLean Decl. Att. 28 (VZ-PA App. A, Tab B).) Verizon's own billing expert testified that no conclusive judgments could be made until the completion of several billing cycles under the new procedures.

Acknowledging Verizon's past problems in providing acceptable electronic bills, Verizon's billing expert explained that, "[i]t's not unreasonable for [CLECs] to say 'prove it'" in response to its claim that it would fix the problems with the electronic bills. (Geller testimony, April 25, 2001 en banc 271 hearing, Tr. at 134 (VZ-PA App. B, Tab C, Sub-Tab 26).) Later, that same Verizon witness asserted that "[w]hat we'd like to be able to do at that point in time [June 16, when the fixes are complete] is, to insure that all parties have an opportunity to review it, Verizon included, is to run several cycles, in other words additional bill cycles, and at that point in time Verizon would make its final decision as to whether or not BOS-BDT could become the official bill and replace paper." (Id. at 146). Unfortunately, Verizon chose to cut this review cycle short in an effort to obtain premature section 271 authorization. Indeed, two Pennsylvania commissioners dissented from the recommendation to support section 271 authorization precisely on this point, noting that "Verizon must . . . successfully complete at least two billing cycles" before section 271 authorization is warranted. June 6, 2001 Public Meeting, Statement of Comm'r Brownell at 1. See also June 6, 2001 Public Meeting, Statement of Comm'r Fitzpatrick at 1. A single month's bill is simply insufficient to establish acceptable performance,

even if the May bill had been perfect. For proof of that proposition the Commission need look no further than Verizon's deficient June bill.

## **II. PENNSYLVANIA'S PERFORMANCE METRICS AND REMEDIES ARE NOT SUFFICIENT.**

Pennsylvania's Performance Assurance Plan ("PAP") does not provide an adequate deterrent against anticompetitive behavior. Once section 271 authority is granted, the only serious incentive for Verizon to provide commercially acceptable service to its competitors will be the PAP, and there is every reason to believe that in its present form it will be inadequate for this purpose. Indeed, Pennsylvania's PAP has been fully operative for a year but has not led Verizon to resolve the issues discussed in these comments, which are being addressed, if at all, only because of the section 271 process. The lesson is clear – section 271 entry creates an incentive for Verizon to address these problems, but Pennsylvania's PAP does not.

There are two basic problems with the PAP. First, it does not adequately capture Verizon's performance. Second, even if it did, it does not provide adequate remedies that would cause Verizon to change its behavior. The PUC is well aware of these problems – it has convened a proceeding in which it has required Verizon to adopt the more comprehensive New York metrics, and also established a presumption that New York remedies should be adopted. Unfortunately, Verizon has not yet begun reporting on the former, and opposes the latter. The result is a plan that the PUC itself implicitly acknowledges is inadequate. Section 271 entry should be permitted only after, not before, the changes ordered by the PUC have been adopted and proven to work.

**A. The PAP Does Not Adequately Capture Verizon's Poor Performance.**

The PAP does not accurately report Verizon's performance in two respects: certain metrics are missing or are recorded for "diagnostic" purposes only; and other metrics fail to measure performance in a meaningful manner. Either way, Verizon's inadequate performance is not captured, and no remedies are triggered. WorldCom also continues to question whether the data on the reports is accurate. Kinard Decl. ¶ 8.

The PAP's failure to address flow-through problems is a critical failure of the first kind. Verizon's performance on flow-through has great competitive significance because manual handling of orders inevitably increases the number of errors. Verizon should measure total flow-through of orders, as well as "achieved" flow-through, that is, the success rate of orders that are designed to flow-through. The Pennsylvania metric for total flow-through is merely "diagnostic," which means that no penalties are assessed based on the metric. There is no metric at all for achieved flow-through, a critical failure of the current plan. Every Bell Operating Company ("BOC") that has received section 271 approval has been subject to performance penalties relating to achieved flow-through. Kinard Decl. ¶¶ 9-10.

Flow-through is hardly the only missing metric. The Pennsylvania PAP also lacks reporting on the receipt of Billing Completion Notifiers ("BCNs"). Verizon clearly can report on this metric now as it provided data in the section 271 process for Pennsylvania using the New York metric. In Pennsylvania proceedings, WorldCom urged Verizon to immediately implement the BCN metric that is in the New York PAP (SOP to BCN in 3 days), but Verizon declined to do so. The Carrier Working Group in New York is further refining the BCN metric, which

Verizon should implement in Pennsylvania as soon as it is adopted. Kinard Decl. ¶ 11. Nor does the PAP record the timeliness of receipt of electronic bills, since Verizon had declined to identify them as bills “of record.” Verizon has been ordered to start capturing this metric with its July records, but Verizon has not in the past been able to make changes to its PAP in a predictable or reliable manner. Kinard Decl. ¶ 15.

Other metrics exist but are plainly inadequate. Until recently WorldCom suffered continual problems receiving timely provisioning completion notices (“PCNs”), yet Verizon has always reported its performance at 100%. The reason is that the existing metric measures only the time it takes for the PCN to travel from its Service Order Processor back to WorldCom. That is an irrelevant (and unverifiable) interval. Verizon should instead measure the time it takes from due date to completion – just as it does in New York and Massachusetts. Kinard Decl. ¶ 13.

The Pennsylvania PAP also provides no remedies for trunk blockage. Again, the equivalent metrics carry significant penalties under the Massachusetts and New York PAPs because this is such a fundamental measure of one of the key areas of Verizon’s performance. If trunks are blocked, Verizon’s customers cannot reach CLEC customers. Since Verizon customers greatly outnumber CLEC customers, this harm most affects the CLEC customers since they cannot receive calls from a majority of telephone users. As with flow-through, every BOC that has received section 271 approval has been subject to performance penalties relating to trunk blockage. Verizon also needs to add inbound augment trunks to its interval metrics, and particularly a missed appointment metric. In other ways as well, the metrics measuring performance in providing trunks is deficient and less adequate than the metrics in place in New

York and Massachusetts. Kinard Decl. ¶¶ 16-18.

Verizon's metrics also continually reflect that its billing practices are nearly flawless, yet at the same time Verizon has acknowledged chronic failures in its billing practices, as discussed above. This is a result of a failure to adopt relevant metrics (such as those that evaluate the accuracy specifically of electronic bills), and a failure of those metrics that do exist. For example, as previously discussed, the metric that measures the accuracy of bills reports only those errors that CLECs report to Verizon within thirty days of when they were supposed to receive the bills. But the paper bills that Verizon has been sending are inauditable, and in any event are typically received late and could never be audited in time to report back to Verizon errors in time to be captured in the metric. Thus Verizon's abysmal billing practices are reported as near perfect, and Verizon has had no incentive to correct them apart from the section 271 proceeding. Kinard Decl. ¶ 14.

Verizon's only serious response to all of these metrics problems has been to agree to adopt New York metrics sometime after the conclusion of a collaborative process that is just underway, a process that may not conclude until next year. Verizon should not be allowed to rely on promises of such future corrections in making a claim that it is currently subject to a working PAP that will deter anticompetitive behavior. WorldCom agrees that many of the problems discussed above would indeed be corrected if the New York PAP was adopted. But there is no reason for Verizon not to have begun reporting on these changes already – indeed, when it suits its purposes Verizon already reports on its Pennsylvania performance based on New York metrics. It simply has declined to do so for any of the problem areas addressed above. Kinard Decl. ¶ 21.

Reliance on future changes to the metrics is especially inappropriate here because Verizon has a terrible record in metrics change management, and there is no reason to believe that the adoption of New York metrics will come quickly or smoothly. KPMG was unsatisfied with several aspects of Verizon's metrics change control procedure, finding that "changes to metrics have not been consistently developed, evaluated and implemented in accordance with either the internally documents process or Bell Atlantic interview statements." (VZ-PA App. B, Tab F, Sub-Tab 5.) In its final report, KPMG found that while Verizon had a paper process for implementation of metrics change proposals, it did not consistently adhere to this process. See id. In particular, approved changes to metrics were not always implemented, and the timing of the changes that were implemented was neither clear nor consistent. Id. Verizon now claims to have improved its internal procedures regarding change control, relying on this new paper process. (Guerard/Canny/DeVito Decl. ¶ 139 (VZ-PA App. A, Tab E).) But KPMG's concerns were not with the sufficiency of the paper process, but with Verizon's adherence to that process. Verizon also claims that "KPMG is in the process of reviewing the [new] plan," id. but in the meantime there is no evidence that Verizon is adhering and will continue to adhere to its new process any better than it did the old. Kinard Decl. ¶ 22.

In its final report, KPMG also concluded that Verizon had no standard system for notifying CLECs and the PUC about changes in its performance metrics. See KPMG Final report PMR-4-1-7 (VZ-PA App. B, Tab F, Sub-Tab 2 at 648). This remains a critical problem. Without an accurate notice of changes to performance reports, CLECs will be unable to replicate Verizon's performance reports. Moreover, KPMG also found that Verizon's systems and procedures for tracking metric changes was insufficient – both because documentation did not

clearly indicate how information could be accessed or obtained, and because Verizon itself was not able consistently to provide the correct month of implementation for changes. See KPMG Final Report PMR-4-1-8 (VZ-PA App. B, Tab F, Sub-Tab 2 at 649). Put together, the lack of notice of changes to metrics, and the inability to track these changes after the fact will make it impossible for auditors trying to verify the reports, especially months later, to track Verizon's performance to determine whether it is reporting appropriately and accurately. Kinard Decl. ¶ 23.

Verizon's arbitrary treatment of metrics changes is plain from the performance reports themselves. As it has in other states, Verizon has not reported results at all under a number of metrics for extended periods of time, listing them as "under development" ("UD") or "under review" ("UR"). Repeatedly, Verizon has promised to begin reporting on all metrics by particular months, and repeatedly, and without warning CLECs, it has failed to do so. Only when this section 271 application was imminent did Verizon finally begin to offer more complete reports, but even now Verizon has not agreed to supply the performance figures it previously withheld, nor retroactively make any payments due. Of course, if Verizon reports no results, the quality of its service is unknown, and the reports cannot be relied on to prove section 271 compliance. Moreover, if Verizon fails to report results, it also escapes payments that it might otherwise be liable for under the PAP. Unfortunately, there is no provision to require Verizon to begin reporting on a given metric within a defined period of time. If and when Verizon finally adopts the New York metrics, WorldCom fully expects to see "UDs" and "URs" appearing in place of data whenever it suits Verizon's purposes. Kinard Decl. ¶ 24.<sup>1</sup>

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<sup>1</sup> Nor are other change management failures reflected in Verizon's metrics. The Pennsylvania PAP contains no

**B. The Remedies in Pennsylvania Are an Inadequate Deterrent to Verizon Discriminating Against CLECs.**

When, as here, the accuracy and verifiability of Verizon's performance reports are not established, the entire system of performance remedies is fatally compromised. But even if Verizon's performance were reflected in a meaningful way in its reports, serious problems with the PAP make it an inadequate deterrent against discriminatory treatment. Kinard Decl. ¶ 25. Verizon's penalties are divided into two tiers, the first of which purports to provide "pro rata" credits for any month of bad performance, and the second of which purports to provide more serious remedies for longer term violations. Neither tier is adequate to its purpose.

As to Tier I credits, the PUC's requirements of "pro rata" payments for service "not received" has never been explained and is obviously inadequate. Verizon's view, apparently, is that if any service is delivered, no matter how late and no matter how inadequate, CLECs are entitled to no Tier I credits. WorldCom has never received any Tier I credits, and it may be that no CLEC has ever received a credit, notwithstanding well-documented problems with Verizon's performance. Kinard Decl. ¶¶ 26-27.

There are equally substantial problems under Tier II of the plan because Tier II remedies are negligible until the fourth month of poor performance. Verizon can provide egregiously inadequate performance in a given metric for three months in a row and pay only a total of \$8,000 (\$0 in the first month, \$3,000 in the second month, and \$5,000 in the third month). Even in the fourth month, when payments reach \$25,000, they are not adequate to deter anticompetitive conduct. There is simply not enough bite in this plan to deter bad behavior.

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metric for critical change management functions, including Software Validation and Software Trouble Resolution and Timeliness. Kinard Decl. ¶ 20.

Kinard Decl. ¶ 28.

Additionally, Tier II payments are triggered by failure to perform on a particular metric, but there is no disaggregation by product or geographic criteria within the metric, so that failure to perform on a submetric level in providing elements used to provide a particular product might not trigger any remedy. For example, a CLEC that uses predominately UNE-P might suffer discriminatory service but find that no payments were due it because Verizon provided good service for other products, such as Resale, that were included in the same aggregate metric.

Kinard Decl. ¶ 31.

Further, just as Verizon is not properly reporting on the metrics, neither is it properly reporting on the remedies. As detailed in the February 2001 Commercial Availability Filing, Verizon often is not calculating the Tier II remedies properly, which has led to Verizon not paying remedies when they were due. Kinard Decl. ¶ 32.

The Pennsylvania PUC is well aware of these problems, and has now established a “rebuttable presumption” that the New York remedies should be substituted for the inadequate Pennsylvania remedies. The New York remedy plan does indeed provide much more deterrence than the Pennsylvania plan – especially because of its critical measures and mode of entry triggers. Verizon is paying approximately \$400,000 each month to WorldCom for inadequate performance in New York. Essentially similar inadequate performance in Pennsylvania is costing Verizon less than \$20,000 a month, even though WorldCom’s installed customer base in Pennsylvania is now over one-third as large as New York and its order volume is over half as large. Unsurprisingly, Verizon vigorously opposes the importation of the New York remedy plan into Pennsylvania, and as a result it cannot rely on the New York remedies for purposes of

this application. Not only has it formally opposed the New York plan at the Pennsylvania Commission, it has not even agreed to abandon its legal position that Pennsylvania has no right to impose any remedies on its misconduct. Kinard Decl. ¶ 33-34.

Verizon's strenuous opposition to remedy plans ordered by the PUC was clearly spelled out in its brief in Verizon Pennsylvania, Inc. v. Pennsylvania PUC, No. 1902 C.D. 2000, at 16 (Pa. Comm. Ct. filed December 8, 2000), in which it stated

The remedies scheme ordered by the PUC is fundamentally flawed. The PUC has awarded "damages" to CLECs, to be paid by Verizon, where Verizon fails to meet specified performance standards. The law is clear, however, that the PUC has no authority to award damages to a utility customer for service violations. The Pennsylvania Supreme Court has ruled explicitly on this issue, and there can be no serious doubt about it. Nothing in federal law gives the PUC the power to award damages, either. True, the PUC has a role in the FCC's review of Verizon's 271 Application to provide long distance service, and the PUC has the ability to refuse to provide a favorable report to the FCC unless Verizon submits to the performance remedies that the PUC wants. But the PUC's role in Verizon's 271 Application confers no legal authority on the PUC to award damages to CLECs. Nor does any other provision of federal law. Contrary to the PUC's claims, Verizon has raised and preserved these arguments at the appropriate time before the PUC.

If that was not clear enough, Verizon drives home its position in the next paragraph of its brief, id., stating

Even if the PUC had the authority to award damages -- and it does not -- the PUC concocted notion of liquidated damages violates basic Pennsylvania contract law. Liquidated damages cannot be awarded unless both parties to a contract agree to do so. The sum agreed to as liquidated damages must be a reasonable approximation of the expected loss. An excessive amount of liquidated damages will be categorized as an unenforceable penalty. The PUC's order runs afoul of each of these principles. Verizon has not agreed to either the concept or the amount of liquidated damages ordered by the PUC

Verizon's ongoing threat to challenge in state court any remedies plan that it does not like is clearly intended to exert pressure on the PUC to pull its punches on this issue so that Verizon will not tie up the PUC's resources in litigation -- regardless of the merits of Verizon's case.

Under these circumstances, Pennsylvania's preference that Verizon adopt the New York remedy plan shows only that even the PUC is aware that the current plan is inadequate.

### **III. VERIZON HAS NOT MET ITS BURDEN OF PROVING THAT IT HAS SATISFIED CHECKLIST PRICING REQUIREMENTS.**

In this application, the only argument that Verizon makes in support of Pennsylvania's UNE rates is that they "permit competitive entry" throughout the state. *See* VZ-Pa Br. at 82. Ironically, this is a claim that Verizon itself previously persuaded the FCC is irrelevant for section 271 purposes. In any event, Verizon is wrong: the absence of TELRIC pricing in Pennsylvania has real competitive effect. Current prices do not facilitate the development of wide-scale competition throughout the state, as the Act and the FCC's rules require. Loop rates in particular are high – grossly in excess of the prices generated by the TELRIC model WorldCom submitted during the Global proceeding in 1999, and approximately 25% higher than even a more conservative estimation of what competitive rates would produce in Density Cells 1-3, and 50% higher in rural Cell 4. These inflated loop prices, particularly in the rural zone of the state, are the principal reason that WorldCom, and presumably other CLECs, are precluded from competing in residential local markets ubiquitously throughout the state through the leasing of UNEs.

While the FCC is wrong to conclude that competitive considerations are irrelevant, here there is a much less controversial reason to find these rates not TELRIC compliant: Verizon has failed to carry its burden of demonstrating that the rates reflect its costs or derive from a reasonable application of this Commission's TELRIC methodology. The current UNE prices in Pennsylvania – which the PUC adopted in the Global Order – are inconsistent with TELRIC